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THE UNITED STATES AND COLOMBIAN OIL

by

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The author of this study has long been a student of Latin American affairs and has recently returned from a visit to the Republic of Colombia. Professor Rippy is personally responsible for any interpretations or opinions either expressed or implied in this report.

INTRODUCTION

IT is now a commonplace to assert that petroleum and its derivatives have come to possess prime importance in business and industry as well as in their direct relation to the military and maritime power of nations. Control of important sources of supply and governmental policy with reference to such sources are matters of vital international concern. In nations which possess no major fields and which are forced, therefore, to depend upon foreign corporations for their oil, there has developed a tendency to organize national sales monopolies for the purpose of insuring a steady and reasonably economical supply. In other nations, and especially in those whose talents for business and industry are undeveloped, there has frequently appeared a disposition carefully to guard their hydrocarbons against a too rapid and profitable exploitation in the interest of foreign organizations. Colombia, with vast petroleum resources, falls within the latter group.

In Colombia, as in several other nations of Latin America, legislation regarding the subsoil has not been consistent. During the Spanish régime the principle was maintained that the subsoil belonged to the Crown, regardless of the ownership of the surface. With the achievement of independence the same principle was asserted, the nation being substituted for the Crown. But, in 1858, the opposite principle of private ownership of many of the subsoil treasures, including hydrocarbons, was adopted. During the next few years these treasures presumably passed into the private possession of the owners of the surface lands.

It seems reasonable to assume, for instance, that up to 1873 every landowner in Colombia also owned a majority of the commodities beneath his lands, including petroleum and related substances. On that date, however, the old principle was reenacted with reference to subsequent alienation of the national public lands; but, since petrolem was not specifically mentioned until 1903 in the legislation applicable to these lands, certain prior rights have been accorded to owners who acquired their land titles from the nation between 1873 and 1903.

In the legislation of 1913 appeared the first indication of a determination to exercise more rigid control over the exploitation of petroleum. By June 1919 this determination had crystallized into a decree affecting the hydrocarbons underlying all the soil of the republic, regardless of ownership or date of original title. The attitude of the oil companies and the procedure of the Government of the United States led to a temporary modification of this policy, but not to a removal of the national sentiment. The law of December 1919, amended in

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1923—that is, the law now in force—did not fully satisfy the companies, but they began operations under it with renewed confidence. In 1927 and 1928 legislation was enacted requiring the presentation by any persons engaged in the petroleum industry in Colombia of documents proving ownership of lands in which exploration was being undertaken, and establishing fines for failure to comply with these regulations. The companies protested and it was alleged that the United States interposed its good offices. As a result, the legislation has been suspended, pending an attempt to reach an agreement regarding new legislation.

Aside from the matter of general legislation, several other factors have been involved in the Colombian petroleum question. In 1913 the agent of a powerful British company appeared and was on the point of acquiring a large concession near the Panama Canal Zone and in a region adapted to the construction of another canal. Due perhaps to the attitude of the Washington government, as well as to other factors, the British withdrew. In 1927 the British appeared again, only to fail a second time, although the United States Government probably had nothing to do with their failure. In the meantime, several companies owned largely by Yankees and operating in connection with Colombia's only productive field (up to the present time) became the objects of Colombian press attacks, one of them, the Tropical Oil Company, becoming involved in a dispute relative to the interpretation of the royalty provisions of its contract. Near the end of 1928 the Tropical Oil Company settled its dispute with the Bogotá authorities, without direct assistance from Washington. Another company, the South American subsidiary of the Gulf Company, suffered the nullification of a valuable concession (the Barco concession). The United States Government interested itself in this concession, but its interposition was ineffective. It is understood that the question is still before the Colombia court.

At the present moment, therefore, conditions relative to the development of Colombian oil are unsettled, and, except for the one field now productive, in a state of semi-paralysis.

COLOMBIAN OIL LEGISLATION

The history of Colombia's petroleum legislation begins, as elsewhere in Spanish America, with the old Spanish mining ordinance of 1783. This ordinance reads as follows:

> "Article 1. The mines are the property of my Royal Crown. . . . Article 22. I also grant permission to discover, solicit, register, and denounce . . . not only the mines of gold and silver, but also those of precious stones, copper, lead, tin, quicksilver, antimony, calamine, bismuth, and rock-salt, and all other fossils whatsoever, whether they be perfect minerals or half minerals, bitumens or juices of the earth (*bitúmens o jugos de la tierra*). . . ."[1]

The Supreme Court of Colombia has held that petroleum was included "without any doubt" in the expression "bitumens or juices of the earth," and that it was therefore one of the subsoil products which was claimed as property of the Spanish Crown.

The next important measure was a decree of the Liberator, Simón Bolívar, dated October 24, 1829, which substituted the Colombian nation for the Spanish Crown. Article 1 of this decree declared that

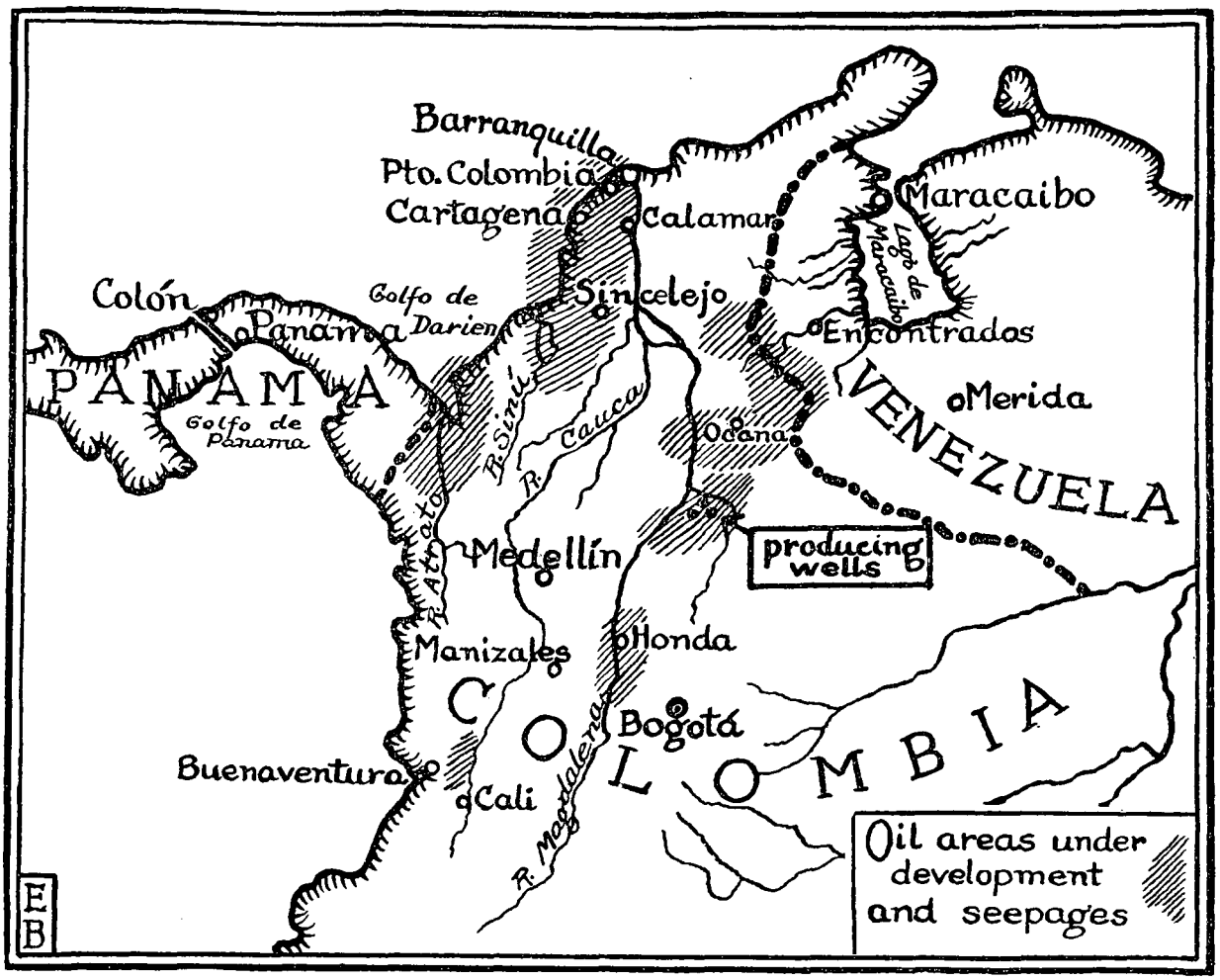
> "mines of every class belong to the Republic, whose Government may concede them in proprietorship and possession to the citizens who petition for them, under the conditions stipulated in the mining laws and ordinances and in conformity with those which this decree provides."

Thus Bolívar's decree declared the subsoil products in the Republic of Great Colombia, including bitumens and juices of the earth, to be the property of the nation and subject to the disposition of the national government.

So they remained until the federal constitution of 1858 was put into operation. By the terms of this fundamental law, however, the national government reserved for itself only the emeralds and rock salt and transferred to the confederated states all other subsoil products existing under lands not a part of the national domain (*terrenos baldíos*). During the next twenty-five years

1. All the data in this section are taken from Ernesto Vasco Gutiérrez, *Código de Petróleos* (Bogotá, 1927) and J. W. Thompson, *Petroleum Laws of All America* (Washington, 1921).

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COLOMBIAN OIL FIELDS (1921)

nearly all of the states established the principle that all mines except those of gold, silver, platinum, and precious stones belonged to the owners of the soil underneath which they were deposited. The important state of Antióquia, for instance, passed a law which stipulated that emeralds and rock salt belonged to the nation, that gold, silver, platinum and copper belonged to the state, and that all other mines of whatever class belonged to the owners of the surface.

In the meantime, the government, which like that of the United States possessed a large national domain described by the term *terrenos baldíos,* enacted only one law relating to subsoil products. This was the fiscal code of the year 1873. It reserved to the republic the proprietorship of the mines and deposits of coal, as well as those of guano and other fertilizers, which should be found in the national public lands of the republic, stipulating that said mines or deposits should not be alienated or adjudicated with these lands but that they should be retained for the benefit of the nation. It also provided that "the mines of copper, iron, and other metals not of the precious variety, and those of sulphur and others not designated in this heading, which shall be discovered in the *terrenos baldíos,* are likewise the property of the Union. . . ." In other words, this law declared the subsoil treasures of the *national domain* to be the perpetual, inalienable property of the nation.

Then came the constitution of 1886, which transformed Colombia into a centralized republic and greatly enlarged the powers and possessions of the national government. Article 202 of this constitution provided, among other things, that the following belonged to the Republic of Colombia:

> "The *baldíos,* mines, and salts which belonged to the States [*i. e.,* from 1858 to 1886], whose dominion the Nation recovers, without prejudice

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to the rights granted to third parties by said States. . . . The mines of gold, silver, platinum, and precious stones which exist in the national territory [*territorio nacional*, which should be carefully distinguished from *terrenos baldíos*], without prejudice to the rights which the discoverers and explorers of some of them have acquired by previous laws."

In brief, the new constitution, potentially at least, restored the old status of 1783-1829, so far as this could be done without injury to the rights acquired under the state laws passed between 1858 and 1886.

But this did not mean that the central government was to be committed forthwith to the nationalization of subsoil products. A law of March 1887 adopted and applied to the national territory the mining code of the extinguished state, now the department, of Antióquia. That is to say, it declared the mines of emeralds and rock salt to be the property of the nation; those of gold, silver, platinum, and copper, the possessions of the departments; and all the rest, of whatever class, to be the property of the owners of the surface beneath which they should be found. Apparently, however, the law of 1887 did not apply to the *terrenos baldíos*, or national domain. Presumably, this continued to be governed by the fiscal code of 1873, already analyzed.

EARLY COLOMBIAN LEGISLATION

The first specific mention of petroleum in the national legislation of Colombia appeared in Law 30 of October 22, 1903. This law applied the fiscal code of 1873, which related exclusively to the national domain (*terrenos baldíos*), expressly to oil, employing the following language:

"Article 3. The provisions of the fiscal code in reference to coal mines shall be applied also to the deposits of asphalt, of whatever class, consistency, or color, and to those of petroleum or coal-oil, of every grade or class, and natural gas, and to any other products of the same or analogous nature."

The law also declared that the consent of the national Congress was necessary to the validity of all contracts for the exploitation of these products.

Five years later a national law forbade the transfer of dominion (*el dominio*) over the maritime islands of Colombia or "of the lands which contain deposits of salt, springs of petroleum, asphalt, deposits of heron-hawks, deposits of guano, or springs of medicinal waters." It permitted, however, the leasing of these commodities, and the law was confined in its application to "*terrenos baldíos*."

The new fiscal code of November 23, 1912, in keeping with the previous laws relating to the subject, declared the property of the nation all

"mines of coal, iron, sulphur, petroleum, and so forth, discovered or which shall be discovered in the *terrenos baldíos* or in those with such character which have been adjudicated subsequent to October 28, 1874 [the date when the law of 1873 became effective], without the slightest injury to the acquired rights of natural or juridical persons."

Apparently in the conviction that the code of 1873 may not have embraced petroleum until it was expressly applied to this substance by the law of October 22, 1903, the code of November 23, 1912 provided that

"mines of petroleum which shall be found in *terrenos baldíos* or which have been adjudicated as such [*i. e.*, granted to individuals or corporations] subsequent to the application of Law 30 of 1903 may be denounced [namely, claimed and exploited] by their discoverers."

Thus it would appear that lands acquired from the national domain between 1874 and 1903 were, by implication, to be exempted from the denunciation of prospectors other than the owners of the land. Moreover, the law excepted from the application of this last provision the "petroleum mines which are now being exploited by individuals by virtue of contracts validly entered into with the Government."

One other enactment, Law 75 of November 15, 1913, completes the early oleaginous legislation of Colombia. This law contained two provisions relative to the subject. Article 1 reserved for the nation

"the proprietorship of the deposits and sources of petroleum and of hydrocarbons in general, situated in public lands (*terrenos baldíos*), or in lands which pertain to the Nation by virtue of any other title."

Article 2 provided that:

"Pending the passage of a law regulating the denouncement and adjudication of sources of petroleum and hydrocarbons in general, situated in public lands, it will be only possible to make temporary concessions of these rights by virtue of contracts approved by Congress."

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Such was Colombia's national legislation regarding petroleum up to the year 1913. It contained nothing which would interfere with the petroleum rights of surface owners whose titles had been acquired prior to 1873. Moreover, there is some ground for contending that this legislation practically admitted that owners of surface acquired prior to October 22, 1903 likewise possessed prior rights to the petroliferous substances deposited beneath the surface of their holdings.

THE PEARSON INTERESTS AND THE FLURRY OF 1913-14

Up to the beginning of 1913 very little had been accomplished in the way of developing oil in Colombia. A few native individuals and firms had been active for almost a decade, but in the main they had been unsuccessful. With the exception of a Canadian company, which began to drill for petroleum as early as 1908, foreigners had done almost nothing.[2] Then occurred a series of events which attracted wide attention.

In Mexico it gradually became evident that the firm of Pearson and Son, Limited, which had already secured large privileges and concessions, was backing the dictator Victoriano Huerta in the hope of obtaining further advantages from his hostility to Wilson's Mexican policy. It also became evident that the British Ambassador was supporting Huerta with apparently the same end in view. From Costa Rica, Ecuador, and Colombia came news, moreover, that Lord Murray, an agent of the Pearson group, had secured very important oil concessions from the executive authorities, which only awaited the ratification of the congresses of these respective States.

The Colombian concession appeared to be most significant. It permitted the Pearson syndicate to locate 10,000 square kilometers of oil lands in any part of the republic. "Under this contract," according to a dispatch in the *New York Times*, "the Pearson syndicate would have exploited virgin oil fields in Colombia of great value, and would have received the necessary rights for building railways, docks, quays, and canals, installing telegraph and telephone systems, and everything necessary for the exploitation of the oil deposits."[3]

It was natural that American oil interests should be envious of Pearson's procedure. It was also natural, perhaps, that some should see in the affair a threat to the security of the Panama Canal and the sea power of the United States. The resentment of the Wilson administration appears to have been aroused almost exclusively, however, by another phase of the question. The British attitude and the Pearson concessions ran counter to the principle of constitutional democracy which the United States professed to be trying to establish in Latin America. During the last three months of 1913, Mexico and Colombia—and perhaps also Costa Rica and Ecuador—thanks largely to the Pearson interests, became connected in our British diplomacy.

On March 13, 1913 Wilson announced his opposition to Latin American dictators.

> "We can have no sympathy," he said, "for those who seek to seize the power of government to advance their own personal interests or ambitions."

He was opposed to dictators because they were the enemies of democracy and constitutional order. On October 27, 1913 he expressed hostility to the concession-seekers of powerful financial groups on exactly the same grounds.

> "We have seen material interests threaten constitutional freedom in the United States," said the President. "Therefore we will know how to sympathize with those in the rest of America who have to contend with such powers, not only within their borders but from outside their borders also."

These views were in entire accord with those of Bryan who complained of the

> "machinations and political intrigues of foreign concessionaires in the republics of Central and South America. . . . The right of American republics to work out their own destiny along lines consistent with popular government is as

2. P. L. Bell, *Colombia: A Commercial and Industrial Handbook* (Washington, 1921), p. 121.

3. *New York Times*, December 31, 1913, p. 6, gives a summary of the contract. The contract was dated April 24, 1914.

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much menaced today by foreign financial interests as it was a century ago by the political aspirations of foreign governments. . . . We must protect the people of these republics in their right to attend to their own business, free from external coercion, no matter what form that external coercion may take."[4]

Such were the sentiments of Wilson's Secretary of State late in October. In the main, Ambassador Page also gave the principle his enthusiastic backing in London.

The effects of the new policy soon became evident. British support was withdrawn from Huerta. Cowdray (Pearson) interrupted his machinations in Mexico. Lord Murray withdrew his Colombian oil contract, hinting that pressure had been exerted from Washington, while Cowdray, in London, not only referred ambiguously to official pressure but mentioned the hostility of the public in the United States. Moreover, the Pearson syndicate failed to obtain its Costa Rican concession and probably also that of Ecuador.[5]

In spite of the denials which were said to have come from the White House and the State Department,[6] pressure appears actually to have been exerted. The correspondence of Colonel House and Ambassador Page clearly reveals this. It also indicates that Page thought his interposition had been effective. On January 8, 1914, he wrote enthusiastically of his victory:

"They [*i. e.*, British statesmen] took up the dangers that lurked in the Government's contract with Cowdray for oil; and they pulled Cowdray out of Colombia and Costa Rica—granting the application of the Monroe Doctrine to concessions that might imperil a country's autonomy."

A little later he wrote in the same vein:

"I believe that if Taft (let us say) had had another four years, Cowdray would have owned Mexico, Ecuador, and Colombia, or so much of them as he cared for, with such a grip on their governments as would have amounted to a mortgage. He could have controlled them at any time and in any essential way he chose. The more I hear and see and learn, the surer I become that these countries owe their freedom from this dictatorship to you. . . . They [Cowdray and other Englishmen of his type] are doubly afraid—first of the United States, then of their own government in its relations to the United States. No British Government is going to risk our friendship for commercial adventurers."[7]

Furthermore, Page's correspondence indicates that he was also in communication with the Latin American diplomats. On November 23, 1913, he remarked in a letter to House:

"I'm inviting the Central and South American Ministers to lunch with me, one by one, and I'm incidentally loading them up. I have all the boys in the Embassy full of zeal and they are tackling the Secretaries of the Central and South American legations. . . ."[8]

Thus Page had two avenues of approach to the goal he desired to reach and he used them both. He exerted his influence upon South American as well as British statesmen. So far as Colombia was concerned, the results of his efforts are doubtful. Eleven days before Cowdray withdrew his Colombian contract and eight days before Page wrote House an account of his "loading up" the Latin American Ministers, the Colombian Congress passed the law which we have already analyzed. It will be recalled that this law, which bears the date of November 15, 1913, provided (1) that the nation should reserve the proprietorship over all petroleum beneath the public lands of Colombia and (2) that only temporary concessions of the right to develop this petroleum could be made until the passage of a more mature and general law. But it is not necessary to assume that influence exerted by the United States upon Colombia had a decisive influence upon the procedure of the Colombian Congress. The action of the members of this body may be explained largely by the influence of competing oil companies and by solicitude for the national welfare. Carlos M. Sarría, recently Colombian Consul-General in New York, declared in this connection:

"The oil concessions were not approved by the Colombian Congress solely because the Col-

4. Mary Baird Bryan, *The Memoirs of William Jennings Bryan* (Philadelphia, 1925), p. 359.

5. *New York Times*, November 27, 28, 30, and December 2, 30, and 31, 1913.

6. *Ibid.*, November 26 and December 2, 1913.

7. B. J. Hendrick, *The Life and Letters of Walter Hines Page* (New York, 1922-1925), I, 251, III, 112-113.

8. *Ibid.*, I, 212.

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ombian people as a whole, without distinction of party, were opposed to them from the beginning."

Without affirming or denying that the United States had made representations at Bogotá, he went on to point out that a large portion of the Colombian press had attacked the Cowdray concession.[9]

Moreover, Colombia's legislation and attitude may be sufficient to explain Cowdray's withdrawal. If it be in any way true, however, that Page influenced the British Government to pull Cowdray out of Colombia, Costa Rica, and Ecuador, and to prevent his further support of Huerta in Mexico, it should be noted that the British Government received its *quid pro quo*. The repeal of the law exempting certain United States vessels from the payment of Panama Canal tolls may have been the price the United States paid, although Wilson himself apparently was willing to make this concession without any compensation.[10] Indeed, a historian gifted with little more than ordinary imagination might well see in Cowdray's industrious search for oil at both ends and on both sides of the Canal not only the direct result of resentment at Taft's "Dollar Diplomacy" and tolls policy, but also the expression of a deliberate attempt to control the Panama Canal and even to build a competing communication across northern Colombia. If this were true, it would then be necessary to view the outcome of the negotiations of 1913 as extremely fortunate for the security of the United States as well as for the prosperity of its oil companies, for, although Wilson probably did not have the petroleum men in mind and was acting purely on principle,[11] the net result in Colombia and Costa Rica, if not in Ecuador and Mexico, was favorable to American interests.

OIL AND THE COLOMBIAN INDEMNITY TREATY

Interest of United States oil companies in Colombia's petroleum developed rapidly during the next few years and oil in paying quantities was discovered in the field near Barranca Bermeja. Fortunately, we have an official report of the United States Government which briefly surveys the history of oil prospecting and development in Colombia down to the end of 1920. This report deserves to be quoted at length.

"Taking the history of the oil-land concessions and development work by foreign companies in chronological order, one finds that the oil springs of the Sinu River region first attracted attention, together with the indications to the east of Cartagena . . . and led to the obtaining of a concession from the Colombian Government by Diego Martínez y Cía. of Cartagena, in 1905. This concession was to run for 20 years, and gave what was considered practically a monopoly of the oil-refining industry for the Caribbean coast of Colombia.

"These concessionaires brought in a boring apparatus and sunk two shallow wells . . . near the town of Turbaco, 20 miles from Cartagena, on the Cartagena-Calamar Railway. Gas and other signs of oil were found, and it was thought at the time that deeper borings would have discovered petroleum.

"In 1908 the Cartagena Oil Refining Company was formed . . . the stockholders of which . . . were Colombian citizens, headed by the Diego Martínez interests. This company, in 1915, had an investment of about $150,000, including the work at Turbaco, and the oil refinery at Cartagena was paying an annual dividend of 60 to 90 per cent, using imported crude oils from the United States and supplying the coast and the interior with refined petroleum products.

"[About 1914] The Standard Oil Company entered into an agreement with the Martínez interests to take over the control of the oil refinery at Cartagena and to explore for oil in the district covered by their concessions reaching from Turbaco on the east through to the Sinu River on the west and as far as a part of the

9. *New York Times,* November 30, 1913, Part III, p. 6. A dispatch from Bogotá to the *New York Times* declared that Colombian public opinion and the desire of the Colombian Congress to consider other offers caused the withdrawal of the Murray contract (*Ibid.*, November 27, p. 1). American, Canadian, and German syndicates had representatives in Colombia at the time (*Ibid.*, December 31, p. 6). A member of the Pearson firm remarked that Murray's competitors might raise the price of concessions until they would not be worth anything to anybody.

10. This is indicated by the fact that Wilson was ready to repeal the tolls-exemption clause before oil or dictators had become a very live issue. On the relation of the tolls question to Wilson's attempt to secure English backing for his Latin American policy, cf. Charles Seymour, *The Intimate Papers of Colonel House* (New York, 1926), I, 194-204; Hendrick, *op. cit.*, Chapters VI and VII.

11. This view is contrary to that held by many foreign and a few American writers. John Carter, for instance, evinces an inclination to associate Wilson with Machiavelli and Bismarck and speaks of his "high-spirited and mesmeric diplomacy . . . his orchestral blending of ulterior material interest with dramatic moral principles. . . ." (*Conquest: America's Painless Imperialism,* New York, 1928, p. 107, 169). Yet I have not found a particle of evidence tending to show that Wilson desired to eliminate the British oil interests in order to give those of the United States a freer hand. From the pen of Ray Stannard Baker we may expect the final word on this matter in the near future.

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Atrato River Valley. During 1914 and 1915 a well-organized attempt was made by the Standard Oil Company to prospect the district for oil; camps were established, equipment imported, and several wells drilled to considerable depth, encountering shale and a thin ooze of oil but no large quantities. The company definitely withdrew in 1916 from the field, not because the prospects for oil were not good, but on account of certain other unpropitious conditions.

"Another oil-land concession in the Caribbean district was that known as the Armella-De Mares concession, secured by the old Armella-De Mares Company of Barranquilla from the Colombian Government prior to 1900. This concession covered a tract of land having a total area of about 210 square miles and extending east from Turbaco, taking in the surface indications around the towns of Repelon, Rotane, and Rosa Vieja, east of Cartagena and about 40 miles southwest of Barranquilla. . . .

"This concession was taken over by a Canadian company in 1907 and several wells were put down, the work being in charge of American oil-well men of experience. Oil was discovered at a depth of 600 feet, but the drilling had to be suspended when a formation was encountered that prevented further drilling with the tools and machinery employed. This work was suspended in September, 1908. In the summer of 1909 a second well was sunk, with the same tools but with a new crew of workmen; and, after many vexatious delays due to heavy rains, floods, unskilled labor, and transportation difficulties, oil was found at the depths of 500 and 1,000 feet, of excellent quality . . . but in small quantity. This well was capped, and engineers sent out from England recommended the further prospecting of the property, but this was prevented by the advent of the Great War (*sic*).

"A new company is now being promoted in the United States by a prominent Colombian of Cartagena to take over the old Martínez concession and other lands farther to the south with the purpose of prospecting them for oil.

"One of the pioneers in oil exploration in Colombia, Sr. Roberto de Mares, secured a concession from the Government prior to 1900 covering a very large tract in the Department of Santander (del Sur). . . . The first efforts to interest foreign capital in this property met with failure on account of the revolution of 1898-1904. . . . The concession was renewed in 1905 and again in 1916, and the Tropical Oil Company, of Pittsburgh, Pa., was interested in the project; this resulted in active prospecting of the property during 1917, 1918, and 1919, and the bringing in of three flowing wells.

"The subscribed stock of the Tropical Oil Company amounted to 1,500,000 shares, with approximately $4,000,000 available for development work. A total of $800,000 had been spent up to the summer of 1919.

"The lands of the De Mares concession front on the Magdalena River in the Department of Santander, extending to the north as far as the Sagamoso River (a tributary of the Magdalena on the eastern side), to the east as far as the high mountain range, and south as far as the Carare River (also a tributary of the Magdalena). The frontage on the Magdalena is approximately 30 miles, and the depth from the river to the mountains averages 75 miles—the area containing in all about 1,300,000 acres (another estimate gives 3,000,000 acres). . . .

"In March, 1919, there arrived . . . an increased force of engineers, pipe-line men, refinery experts, etc., and the work on the new wagon road [from the Magdalena] to the wells was being pushed.

"In the early months of 1920 the holdings of the Tropical Oil Company in Colombia were taken over by one of the subsidiary companies of the Standard Oil Company. It is rumored that the new owners will construct the pipe line to Cartagena and provide for the exportation of oil from the De Mares concession lands, and, also, that new prospecting and drilling for increased production will be actively pushed during the next two years. . . .

"The De Barco concession was originally granted by the Colombian Government to Sr. Virgilio de Barco, of Cúcuta, in 1905. It occupies the entire northern part of the Department of Norte de Santander, northwest of the border town of Cúcuta and lying directly opposite known and proven oil fields in the Maracaibo region of Venezuela. This concession carried also the privilege of exploitation of asphalt and coal and was taken over by the Carib Syndicate, an American promotion company, in 1917. The Colombian Government formally allowed the transfer . . . in April, 1918, but with certain modifications of the terms of the original concession. . . . The Carib Syndicate explored the region of the concession in 1919 and that same year transferred its rights in this concession to another American oil company formed by the Doherty interests of Pittsburgh . . . known in the United States as the Colombian Petroleum Company and in Colombia as the Compañía Colombiana de Petróleo. . . .

"The De Barco concession . . . contains about 1,500,000 acres.[12] Surface indications contain

12. More recently it has been said to contain 5,000,000 acres.

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crude petroleum of as high as 40 degrees Baumé gravity and of both asphalt and paraffin base. . . . In June 1919 part of the drilling equipment of the Colombian Petroleum Company had already arrived at Maracaibo and preparation for its transportation into the interior and for drilling operations were going forward rapidly, in charge of American oil-well crews with experience in similar work in Mexico.

"The Carib Syndicate has opened offices in Cartagena, from which point expeditions of engineers have covered other parts of the country, the company being interested in the acquisition of other oil lands for exploration and development purposes.

"Colombian citizens have been very much interested in oil lands and are taking an active part in the development of the industry in the way of the acquisition of prospective oil-bearing lands and the promotion of new oil companies, as well as the presentation of apparent opportunities in prospective oil properties to large American petroleum interests."[13]

The development of oil on the De Mares concession greatly stimulated the interest in the oil prospects of Colombia and by March 1921 some twenty-four Yankee and about ten British oil companies had experts in the country. From all appearances another Mexico had been found. Moreover, the Americans were far in the lead, despite the fact that the Canadians and the English were sharing somewhat in the development of the De Mares field.[14]

All was not smooth sailing for the Yankees, however. One important obstacle stood in their way. Colombian resentment at Roosevelt's procedure in Panama still hung like a dark cloud on the horizon. In 1912 the Minister of the United States at Bogotá had written:

"By refusing to allow Colombia to uphold her sovereign rights over a territory where she had held dominion for eighty years, the friendship of nearly a century disappeared, the indignation of every Colombian . . . was aroused and is still most intensely alive."[14a]

The law of 1913 had followed and subsequent years witnessed no change.[15] There was danger that this sentiment might further strengthen a nationalization impulse.

Indeed, on June 20, 1919, President Marco Fidel Suárez issued a nationalizing decree defining the ownership of minerals, including petroleum, and stipulating severe methods of obtaining permission to search for and develop the same. Articles 1 and 2 of this decree required all who desired to explore for petroleum, whether in private or public lands, to obtain the previous permission of the government and to make frequent detailed reports of the progress which they had made. The third article gave the Minister of Public Works the power to grant or refuse such permission; the fourth gave to explorers who had obtained official permission and completed their investigations the preferential right for six months to effect a contract with the national government for the exploitation of petroleum on the lands which they had explored; and the fifth set forth the general basis on which such a contract would be concluded.[16]

American interests believed that some of the provisions of this decree were unconstitutional and confiscatory. Senator Fall, who had begun to interest himself in the Colombian oil situation as early as 1917, communicated with Secretary of State Lansing[17] and the latter attempted to make adjustments with Colombia. In September 1919 the Colombian Attorney-General petitioned the Supreme Court to nullify the decree on the ground that it was unconstitutional. On November 21 following, this judicial body declared portions of the articles mentioned above invalid because they deprived certain individuals of petroleum deposits and rights and thus violated constitutional guaranties. The court declared that these articles ignored and impaired rights acquired by just title and in accordance with legislative enactments; that they attributed to the nation mines which belonged to private persons; that the Executive in dictating the decree assumed powers

13. Bell, *op. cit.*, p. 126-131.

14. *New York Times*, March 14, 1921, p. 8. A correspondent of the *Times* obtained this information from Senators who were opposed to the Colombian indemnity treaty.

14a. As quoted by J. H. Latané, *The United States and Latin America* (Garden City, New York, 1920), p. 271.

15. Cf. U. S. *Foreign Relations* (1913 to 1917), index at "Colombia."

16. Gutiérrez, *op. cit.*, p. 133.

17. Cf. Lodge's statement in *Congressional Record*, 67th Congress, 1st Session, p. 159.

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which belonged exclusively to Congress and hence exceeded his authority; and that the decree did not represent the legitimate exercise of the reglamentary power belonging to the President because it actually opposed and transgressed the laws rather than executed them. In brief, the Supreme Court decided that the President could not by executive decree deprive individuals of their previously acquired rights to the subsoil products beneath the lands which they possessed, nor impair these rights in any way.[18]

Before the close of the year (December 30) the national Congress drafted a new law, supposedly in accordance with the Supreme Court decision. The measure related primarily to the deposits existing or which should be found to exist beneath the public lands, but it declared the hydrocarbon industry and the construction of oil pipe-lines to be public utilities and levied a minimum operation tax of from 4 to 8 per cent upon the gross production of deposits found upon private lands whose owners, having acquired their title prior to 1873—and apparently in some instances between 1873 and 1903—also possessed the treasures underneath their lands. The operation tax in favor of the national government was fixed at a higher minimum rate on the public lands; namely, at 10, 8, and 6 per cent, depending upon the distance of the national domain from the sea.[19]

Several features of this law were criticized by the oil men. They objected chiefly to the provision that, upon forfeiture of any exploitation contract, all property within the concession becomes *ipso facto* the property of the nation; to the high rate of the operation taxes; to the onerous technical requirements relative to the presentation to the Minister of Industries of full reports and maps; to the short time-limit of the leases, which was fixed at twenty years, with the suggestion of an extension of another ten years; and to the right asserted by the government to cancel contracts almost at will.[20]

18. Gutiérrez, *op. cit.*, p. 137. For Lansing's action, taken at the suggestion of Lodge, cf. Senate Document No. 64, 68th Congress, 1st Session, p. 48.

19. *Ibid.*, p. 49.

20. Bell, *op. cit.*, p. 134.

THE TREATY IN THE SENATE

Such was the situation of American oil companies in Colombia when the Republican party returned to power in March 1921. The World War and Wilson's attitude toward the Cowdray interests had given them considerable advantage, but they were nevertheless having their difficulties and some action calculated to improve Colombia's sentiment toward the United States seemed desirable. The ratification of the Colombian indemnity treaty was apparently the logical step. Twenty-five million dollars even without an apology might, they thought, accomplish something. For seven years the treaty had remained unratified. Not even the power of Wilson exerted in a special session of Congress (1917) could secure its ratification. Nevertheless, in April 1921, the treaty was ratified by an overwhelming vote.

It appears that oil was one of the decisive factors.

> "According to one Senator, who said he had received his information from Bogotá and from an attorney representing the oil interests, very few of the oil concessions, if any, will [would] be of value unless the treaty is [was] ratified. . . . This Senator said that some of the concessions were granted with that definite stipulation, while officials of the Republic of Colombia had plainly informed American interests that other grants certainly would be cancelled unless the treaty became operative."[21]

Fall-Roosevelt correspondence, purporting to show a death-bed repentance on the part of the ex-President, was read into the record. Asked by Senator Norris about the exact effect of the ratification of the treaty upon petroleum concessions, Senator Lodge affected great innocence. No oil men had ever approached him on the matter and he did not know the names of the companies concerned, although this must have been the common knowledge of nearly everybody connected with the Harding administration. Nevertheless, he replied:

> "I think, and better judges than I agree with me, that the ratification of this treaty will lead to a prompt additional treaty of amity and commerce with Colombia which will improve our

21. *New York Times*, March 14, 1921, p. 8.

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opportunities there of making secure the concessions we now have."[22]

It is questionable whether the indemnity treaty would have passed had it lacked the support of the friends of oil and sea power.[23]

FORCES BEHIND THE TREATY

The nature of the pledges regarding petroleum made by the Colombian officials during the final consideration of the treaty has not fully been revealed. Lodge refused to permit the Senators who were investigating Fall's oleaginous connections to examine the archives of the Foreign Relations Committee.[24] On August 9, 1919 Secretary Lansing, prompted by Senator Lodge—doubtless influenced by Fall and the oil men—proposed an amendment to the indemnity treaty binding Colombia forever to abstain from acts which would in any way affect the rights of American citizens who at that date possessed in Colombia "real estate, mines, petroleum deposits, or any other like property." The Colombian Government was not willing to accept this agreement as a part of the treaty, but it did consider writing the pledge into a separate protocol. When it was submitted to the Colombian Senate, however, it was rejected. The decision of the Colombian Supreme Court and the new petroleum law of December 1919 to which reference has already been made, represented important assurances on this matter, but apparently other conferences took place between the Minister of the United States at Bogotá and the Colombian Government. During the course of the interviews Colombian officials received the impression that the United States was inclined to make the approval of the treaty "contingent upon the celebration of contracts between Colombia and private American citizens." As a result, the Colombian President, after calling attention to the court decision and the new law, complained that the United States had "no right to say to Colombia: 'If you do not grant favors to my citizens, I will not fulfill my previous obligations.'" He added, however, that if the United States first fulfilled its obligations to Colombia, it "would be possible for Colombia" to promise that this fulfillment would "open the door to many friendly acts." In reply Minister Philip declared that he had been misunderstood. His government had not desired to demand the "celebration of contracts between Colombia and private American citizens" as a condition of ratifying the indemnity treaty. The reply reveals, however, that Mr. Philip had "taken the liberty of expressing his personal opinion to President Suárez to the effect that the celebration by Colombia of important contracts with citizens of the United States at this time would, in all probability, have a most favorable bearing upon the treaty situation."[25]

From the Colombian side has come further evidence. In the summer of 1919, James W. Flanagan, who at that time was organizing the Andian National Corporation—a subsidiary of Standard Oil Company of New Jersey—and seeking a concession for the construction of a petroleum pipe-line from the De Mares field to Cartagena,[26] got in touch with Fall. He soon introduced the Senator to Carlos A. Urueta, Colombian Minister in Washington. The conversion of Fall dates from this period. At the same time, moreover, the Colombian Minister, who formerly had been urging his government to oppose modification of any kind in the indemnity treaty, began to recommend a policy of accommodation with a zeal which has led Colombians to question his motives. He strongly advised his government to make the pledge which Lansing had just then begun to solicit. He even went so far as to declare, without sufficient reason, apparently, that such an agreement alone could deliver Colombia from a worse danger than that confronted in 1903 with reference to Panama. The fate of the Lansing proposal we have already seen. On April 20, 1921 the United

22. *Congressional Record*, 67th Congress, 1st Session, p. 166; and *passim* for the entire debate on the subject.

23. The converts may have been influenced also by a desire to increase our trade with Colombia and to prepare the way for important loans.

24. Such was the report in Colombia (Carlos U. Echeverri, *En la Camera*, p. 74), and the published account shows no documents from the committee. For the remainder of this paragraph, cf. *Senate Document* No. 64, 68th Congress, 1st Session, p. 48.

25. *Senate Document* No. 64, 68th Congress, 1st Session, p. 59-60.

26. Cf. *Who's Who in America* (1928-1929), "Flanagan, James Wainwright."

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States Senate accepted the treaty without any formal pledge. The modified document was then submitted to the Colombian Congress and while this body was engaged in a stormy debate upon the project, Urueta resigned his post and returned to Bogotá to urge the acceptance of the pact. Near the end of the year 1921 it was finally approved, in the midst of financial difficulties and charges of corruption which caused the resignation of President Fidel Suárez.[27]

THE TREATY IN COLOMBIAN POLITICS

At the very time that Urueta was urging the acceptance of the treaty upon the Colombian Congress, or very soon thereafter, he was the attorney of the Andian Corporation. In the following summer Pedro Nel Ospina was elected President of Colombia. Before his inauguration in August 1922, he visited the United States. This was an entirely legitimate and praiseworthy thing to do, but while he was in New York he appears to have been dined, banqueted and even lodged at the home of J. W. Flanagan.[28] When he returned to Bogotá to take up his duties as President he at once chose Urueta as his chief counsellor. Soon afterwards the Colombian petroleum laws were modified in a manner more favorable to the oil companies;[29] Flanagan obtained his pipe-line concession, after having exchanged with Urueta a series of secret letters which when revealed caused a sensation;[30] the Doherty interests transferred their De Barco concession to the South American Gulf Oil Company; and Yankee oil geologists advanced into the jungles. By the end of the year 1927 most of the important petroleum companies of the United States had effected extensive explorations in the chief oil zones of Colombia and had obtained important concessions and lands both from private individuals whose surface holdings entitled them to subsoil products and from the government itself. Thanks mainly to their efforts, which had been costly in human suffering and life, as well as in a financial way, the oil resources of Colombia had become pretty well known, although only one field—in the Barranca Bermeja district—was producing oil in profitable commercial quantities.

American oil companies advanced a long way in Colombia between 1921 and 1927, but they eventually found themselves confronted by new difficulties. Early in 1926, the De Barco concession was declared null and void because of alleged failure to fulfill the terms of its contract. Less than a year later an agent of the Anglo-Persian Oil Company appeared in Bogotá offering unusually large royalties.[31] The British agent was Colonel Henry Yates. According to testimony given to the writer on the spot, Colonel Yates was supported in his request for a concession by the British diplomatic representatives.[32] He is reported to have proposed that the Colombian Government grant the Anglo-Persian Oil Company a 50-year concession for lands which extended as far north as the Panama boundary. Certain Colombians, however, protested against the proposal, on the ground that Colombia's constitution and laws prohibited a foreign government from acquiring, directly or indirectly, such rights. The Yates concession was twice defeated in the Colombian Congress. Presumably the Colombian Congress believed that the British Government, which holds a certain number of shares in the Anglo-Persian Company, directed the policy of the company.

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27. The charges brought forth in Congress against Suárez related to matters other than petroleum concessions.

28. Carlos Uribe Echeverri, *En la Camara,* (Bogotá, 1926), p. 27, 54, *passim.*

29. The terms of the contracts were extended and the companies were given a longer period for the beginning of continuous development of their fields.

30. Carlos Uribe Echeverri, *op. cit.,* for a convenient restatement of the revelations which occurred in 1925. Consult also Luis Cano, in *El Espectador,* July 31, 1928 and Francisco Escobar, in *Mundo al Dia,* October 16, 1928.

31. Twenty to twenty-five per cent. For the English text of the Yates-Montalvo contract, cf. *O'Shaughnessy's South American Oil Reports,* December 1927.

32. A similar statement is made by Ludwell Denny, *We Fight For Oil,* (New York, Knopf, 1928), p. 121. In a review of this book, "A. C. H.," in the November 1928 number of the *Journal of the Royal Institute of International Affairs* states that the policy of the Anglo-Persian Company "is *not* directed and controlled by its government shareholders. They have certain powers merely of veto, not of direction." The reviewer states that the story that the British company wished to secure a strategic position offsetting the Panama Canal is "nonsense."

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MANOEUVERS OF THE OIL COMPANIES

A little later Lieutenant-Colonel Sir Arnold T. Wilson appeared on the scene. He was described as tall and young, with an attractive and agreeable physiognomy and with the gift of extraordinarily pleasant and interesting conversation.[33] He had come, like Colonel Yates, as the agent of the Anglo-Persian Oil Company. A few days after his arrival he was interviewed by one of the press agencies. He stated that he had had conferences with Minister of Industries Montalvo concerning the region embraced in the Yates contract (namely, the Urabá-Atrato River region). He then remarked:

> "The august shadow of the illustrious Mr. Monroe has not yet fallen over the province of Urabá and there is no reason to suppose that the North American companies or the State Department are opposed to the legitimate development of the natural resources of the Colombian Nation by any company whatever, national or foreign."

Asked if the Standard and the Anglo-Persian had reached an understanding, he replied emphatically that there existed no agreement or connection of any kind between the two companies. A few days later he gave out another interview, urging the advantages which would come to Colombia from the operations of oil companies in which foreign governments participated, such as the Anglo-Persian. He then remarked that the true interest of Colombia would be found in the acceptance of the cooperation of all petroleum companies upon equal bases. Only in this way could the enormous work of developing its natural resources be accomplished to the best advantage. In business affairs, he said, "my policy is absolute frankness. Nothing of subterfuges; nothing of intrigues. I play with the cards on the table and with absolute honor."[34] There can be little doubt of his intention to revive the Yates contract or else to sign another embracing the same area. Nor can there by any question of the ability of a man who has spent the greater part of his life in British service in Mesopotamia, India, and Persia.[35] What he has accomplished so far, if anything, has not been revealed.

In addition to renewed British competition, American oil companies have recently confronted another difficulty. With the inauguration of Doctor Miguel Abadía Méndez as President in August 1926, the Colombian Government evinced a disposition to return to its former policy of nationalization.

LAW OF NOVEMBER 17, 1927

On November 17, 1927 an emergency measure (Law No. 84) received the approval of the President. The portions of this law most seriously objected to by the petroleum companies were those which related to private oil lands and to contract proposals now awaiting the approval of the Colombian Government. The second article of the law provided that:

> "Any natural or legal person who, at the time when this law is promulgated, may be engaged in petroleum exploration by drilling wells in the Republic and in private property must present to the Minister of Industries within six (6) months, the documents proving the ownership of the lands in which the exploration is being carried on, as well as the contracts of lease or any other kind concluded with the owners of such lands, in case it is not the landowners themselves who are making the explorations."

The article also stipulated that those who failed to present said documents within the time-limit should be fined at the rate of from $200 to $1,000 for every month's delay. The oil companies contended that this provision violated an article of the constitution which provided that property titles and other private papers could only be demanded as judicial proofs. They further contended that the time-limit for producing proofs of title was too short. They also objected to Article 3, which suspended indefinitely all action on pending contract proposals. In this connection they alleged that they had expended large sums of money in prospecting for oil, and, in doing

33. *El Tiempo* (Bogotá), September 21, 1928; *Diario Nacional* (Bogotá), same date.

34. *El Tiempo*, October 3, 1928.

35. *Ibid.*, September 21, 1928.

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so, had acted on the justifiable assumption that they would be granted the privilege of exploiting such oil as they had discovered without unreasonable delay, and that the delay to which they were being subjected amounted to a diminution of their rights and a violation of the constitution. Lastly, they contended that Article 6, which doubled the operation tax levied on the exploitation of petroleum under private lands, was tantamount to confiscation. This impost, as already noted, was formerly 4, 6, and 8 per cent on the gross production, depending upon the distance of the lands from the sea. By the new law it was raised to 8, 12, and 16 per cent, rates which are higher, according to the allegation of oil men, than those which prevail in any other part of the world.[36]

DECREE OF JANUARY 28, 1928

Reglamentary Decree 150, of January 28, 1928, was supposed to place the new law in operation. The petroleum companies declared that the decree transgressed the law in its severity. In thus going beyond the legislative enactment, the Executive assumed legislative powers and violated the constitution. The decree shortened the period for the presentation of the proofs of title and other papers to thirty days instead of six months, diminished acquired rights by requiring drilling permits with reference to lands whose surface owners legally possessed the petroleum beneath their lands, imposed penalties without due process of law, and attributed to the Minister of Industries the function of passing upon land titles—a function which clearly belongs to the courts.[37] Such were the complaints raised against the decree. In brief, quoting from a journalist friend of the oil interests,

> "Colombia is [was] quite candid in declaring to the world in its petroleum legislation and regulations, that it will [would] take advantage of every possible technicality in the matter of titles to oil rights underlying the lands in that country, to declare them the property of the Nation as against the surface owners."[38]

Indeed, it would seem that the crux of the problem is this matter of land titles. No one questions the right of the Colombian Government to take any course it pleases with reference to the public lands now in its possession, but there exists in Colombia much privately owned land with vague and poorly defined boundaries, whose owners have acquired rights to the petroleum beneath the surface of their holdings.

> "Titles in Colombia are notoriously involved. There are no maps of the oil country, the lands not being worth the cost of surveying. Land records carelessly kept are incomplete, many having been destroyed by recurring revolutions. The basic titles in many instances are from Spanish Crown grants several hundred years old, on great areas described by natural boundaries from an un-named mountain peak to the confluence of streams, etc. . . ."

So say the oil attorneys. While in Bogotá I talked to title attorneys both of the companies and of the government and most of them were inclined to use the word chaos when they referred to the subject. One of the newspapers friendly to the government admitted that all relating to the matter was in a state of "imperfection" and the legislative committee which drew up Law 84, of 1927, declared that the provisions relative to titles were designed to lay the

> "foundation for the indispensable formation of the national archives wherein records are kept of the adjudication of public lands. . . . The duty of presenting the deeds of property," the committee went on to say, "is imposed by statistical reasons, by an elementary administrative order, and because of the need of revising such titles for the purpose of correcting abuse of various sorts which has come to the knowledge of the Government."[39]

Thus all parties admitted and proclaimed the need of revision, but the oil men objected to what they called the harsh and unconstitutional methods which the government had adopted. In requiring that

36. Gutiérrez, *op. cit.*, p. 114; *El Debate* (Bogotá), March 5, 1928; *Diario Nacional*, same date.

37. *Diario Oficial* (Bogotá), January 28, 1928.

38. *O'Shaughnessy's South American Oil Reports*, March 1928, p. 6.

39. Republica de Colombia, Ministerio de Industrias, *Ley 84 de 1927*, p. 6.

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evidences of title be presented within the brief period of thirty days and imposing fines and the seizure of equipment for non-compliance, Colombia was demanding from American oil companies, to use the words of the friends and attorneys of these companies, "a performance which she knows is impossible, under the pain of their forfeiting their oil rights to the Nation."

COLOMBIAN OIL LEGISLATION: AN ISSUE IN DIPLOMACY

Early in 1928 the question of Colombian petroleum legislation once more entered the realm of diplomacy, or rather was reported to have done so. In February of this year the newspapers of Bogotá published the report that Francis B. Loomis, noted for his former connections with the late Theodore Roosevelt, had presented the case of the Yankee *Petroleros* to the State Department and that Samuel H. Piles, United States Minister at the Colombian capital, had been instructed to enter into informal discussion with the Minister of Foreign Affairs. The press was furious. Nearly all journalists agreed that Colombia's "good friend" Mr. Piles should be informed that Colombia was not Nicaragua and that Colombian statesmen were entirely capable of living up to their international obligations and looking after their own affairs.[40] The action taken by Piles has not been revealed, but on June 3 President Méndez suspended the reglamentary decree of January 28 and, hence, held in abeyance Law 84 of the previous year.[41] A few months later another project was introduced into Congress, but that body adjourned late in 1928 without taking final action on the measure.

In the meantime, the procedure of the United States regarding the De Barco concession caused no little excitement. This concession, as already observed, covered a large area on the Venezuelan border in the Colombian Department of Santander del Norte and was transferred to the Carib Syndicate in 1918 with the consent of the Bogotá Government. It was afterwards sold to the Doherty interests and then to the Gulf Oil Company. It was declared null by the Colombian Minister of Industries in February 1926. The concessionaires immediately petitioned for a new hearing. The term of the Nel Ospina administration expired (August 6, 1926) without further action being taken, and the Méndez Cabinet moved with great deliberation. The attorneys of the Gulf Company lost patience and appealed to the United States Government.

On January 13, 1928 Samuel H. Piles, United States Minister in Colombia, complained of the delay and urged an early decision. Carlos Uribe, Colombian Minister of Foreign Affairs, asked in reply if the concession referred to was that which belonged to the Compañía Colombiana de Petróleos. If so, he added, "the Secretary of State of the United States has committed an error in initiating this intervention in respect to an affair which, since it deals with the judicial relations between the government and a national entity, pertains exclusively to the tribunals of the country." Mr. Piles replied that this was the concession in question, but justified his action by the information that 95 per cent of the stock of the Compañía Colombiana was owned by citizens of the United States (namely, the Gulf Oil Company). He later had various informal verbal communications with Uribe regarding the matter.

On August 4, 1928 the Colombian Government resolved that it would "not accede to the revocation of the resolution nullifying the Barco concession which was dictated by the Minister of Industries on February 2, 1926, and approved by the Government on the following day." The basis of the nullification was somewhat shifted, however. In 1926 the caducity (*caducidad*) of the contract was declared because the concessionaires had not presented their plans and studies or begun the works of exploitation (*trabajos de explotación*) within the time-limit set by the contract and because they had not "turned over to the Nation anything for its participation

40. Cf. the newspapers of Bogotá, February 21 to 23, 1928.
41. *El Tiempo*, June 3, 1928.

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in the exploitations." Either the contractor developed petroleum and other commodities without paying the government its share and therefore violated the sixth clause of the contract, or it did not develop these products within the time-limit and therefore violated the third clause of the contract. But—and it is necessary to emphasize the point—the negligence with which the company was charged in this first decree of caducity occurred prior to 1918; that is, prior to the date when the contract was transferred to the Carib Syndicate and the Compañía Colombiana *with the consent of the Colombian Government.* The ratification of this transfer might well be taken as an acceptance of the full validity of the Barco concession at that date. At any rate it would render questionable the right to go back of that date in search of causes for nullification in 1926 or thereafter. In the decision of August 4, 1928, therefore, grounds for a confirmation of caducity were found in the period subsequent to 1918. The new resolution was based upon the suspension of works of exploitation and the failure to produce coal, asphalt, or petroleum within the time-limit, and the violations of the contract were alleged to have occurred between 1923 and 1926.[42]

Señor Uribe immediately transmitted a copy of this final decision to Minister Piles. On August 13 Piles handed the Foreign Office another note. He had been instructed, he wrote, to manifest the "profound surprise" with which the Secretary of State had noted the departure of the new resolution from the reasons formerly alleged in support of the caducity of the De Barco concession. Piles asked that the concessionaires be allowed a period of thirty days for the presentation of a memorial refuting the new allegations. He also maintained that the United States had a right to protect and support its citizens in this matter. Uribe replied that Colombia could not admit the interference of the United States in an affair which had arisen between the Colombian Government and a private concern.

The matter was then allowed to rest for a month, but on September 15 Piles received further instructions. As soon as Uribe obtained an inkling of their contents, he cabled Dr. Olaya Herrera, Colombian Minister in Washington, informing him of the resolution of the government inflexibly to sustain the thesis that it would not permit the intervention of a foreign power in questions which were the subject of decision in the national tribunals. On September 22 Piles transmitted another note based upon his new instructions. The Secretary of State had been surprised, he said, that the Government of Colombia, contradicting the usual practices between friendly nations, had refused to give a definite reply to the request that the petroleum company be allowed thirty days to submit its memorial. He now solicited a precise answer to this question. He made such a request in conformity with international practices which authorized and imposed upon governments the duty of giving reasonable support and protection to national interests. The Government of the United States was not asking anything which it would not cede to Colombia under similar circumstances and for this reason it could not consent to the refusal of the Colombian Foreign Minister to discuss the right of the United States to give due aid and protection to its nationals.

Doctor Uribe took the correspondence into the national Congress and informed that body and the public both of the state of the affair and of his resolution to stand firmly by his contentions. Congress and the press applauded Uribe and severely criticized the United States. The attitude of Uribe received similar approval and that of Kellogg similar condemnation in many parts of Latin America, particularly in Argentina.[43] It was agreed that if the Gulf Company and its Colombian subsidiary had complaints, they should submit them to the Colombian Supreme Court. Until this had been done and a clear case of denial of justice had occurred, the United States had no right to intervene.

Secretary Kellogg, probably against the desires of the oil men, made a declaration to the American press in which he denied officially and categorically that he had asked the Colombian Government to reconsider the cancellation of the De Barco concession. He had, he said, only demanded an answer to

42. The entire decision was published in *El Tiempo,* August 5, 1928.

43. Cf. *La Nación* (Buenos Aires) and *La Prensa* (Buenos Aires), September 23, 1928, and *passim.*

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the question of whether Colombia would grant the company holding the privilege a few days to present their memorial. All this of course was true, but Kellogg added that he lamented Colombia's attitude, that he would not desist from giving American citizens the most adequate support, and that the United States would continue to follow with interest the progress of the decision regarding the Barco concession.[44]

Soon after the excitement caused by the revelation of the diplomatic correspondence, Mr. Piles left Bogotá. The new Minister[45] appointed to supersede him reached the Colombian capital late in November. On December 4 an Associated Press dispatch from Bogotá reported that he had been discussing the De Barco concession with the Colombian Government.[46] The question of whether the cancellation of this concession is legal is still pending in the Colombian courts. A few days later the Colombian Government and the Tropical Oil Company (subsidiary of the Standard Oil Company of New Jersey) reached an agreement regarding the payment of royalties.

PRESENT STATUS OF THE PROBLEM

Thus, it would seem that the petroleum industry in Colombia has been and continues to be enveloped in an atmosphere of friction and uncertainty. The government has not reached a final decision regarding its general policy; few new concessions are being made; work on old concessions has been suspended. Only the Tropical Oil Company is making progress, and it is the object of frequent attacks both in Congress and in the press. The Andian Corporation, owner of the pipe-lines which carry the Tropical Oil Company's petroleum from Barranca Bermeja to the sea and which are controlled by the Standard Oil Company of New Jersey, is also being severely criticized. Journalists and some politicians contend that the nation is not receiving its just share of the profits. Forgetting the backwardness and expensiveness of their transportation system, many Colombians complain of the high price which they are compelled to pay for gasoline; namely, from 45 cents per gallon on the coast to 86 cents in Bogotá. More recently, the dispatch of a special circular by the Department of Commerce to important banking groups in the United States has caused further irritation. The circular expresses lack of confidence in Colombia's financial stability, and has been interpreted in Bogotá as an attempt to exert financial pressure in the interest of the oil companies. Denunciation of Wall Street and Yankee *Petroleros* has become widespread.

The Colombian Government insists that the revision of contracts in order to obtain a better return to the Colombian people, as owners of the national lands and subsoil, is not tantamount to confiscation, and that the royalties paid by foreign companies should at least be equal to their net earnings, the two partners sharing equally in the venture. Moreover, the Colombian Government appears to have in mind the encouragement of the formation of native companies for the production of oil, for it is convinced that more of the profits of the industry would thereby be retained in the country. Whether there is sufficient native talent to achieve this purpose, only experimentation can determine.

With reference to Colombian attitude toward the British, it may be stated that, historically, there usually have been present in Colombia three groups divided upon the question of international policy, all of them men who have realized that a small nation like Colombia, with rich natural resources and Isthmian territory of strategic value to trade and sea power, must find its integrity and security in astute diplomacy. One group has looked to the United States for advice and protection; a second has looked to the British; a third has sought protection in a system of playing the strong powers against each other. Whenever the second and third groups gain the upper hand, important concessions will probably be made to English interests.[47]

44. *New York Times*, October 22, and *El Tiempo*, October 23, 1928.

45. Jefferson Caffrey, who was transferred from Salvador.

46. *La Prensa* (New York), December 4, 1928.

47. This statement is based upon a pretty thorough examination of the diplomatic relations of the United States and Colombia. Cf. R. Rivas, *Relaciones internacionales entre Colombia y los Estados Unidos* (Bogotá, Imprenta nacional, 1915), *passim*; J. Fred Rippy, *Rivalry of the United States and Britain in Latin America* (Baltimore, The Johns Hopkins Press, 1929), Chapter V.

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